

EXHIBIT 2

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2018-DCL-06220
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Eric Garza
Cameron County District Clerk
By Joshua Martinez Deputy Clerk
28535853

CAUSE NO. 2018-DCL-06220

JAMES THATCHER,
Plaintiff,

V.

DARGEL BOATS, INC.;
YAMAHA MOTOR CORPORATION, USA;
UNKNOWN RETAILERS 1 through 9
Defendants.

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IN THE DISTRICT COURT OF

CAMERON COUNTY, T E X A S

Cameron County - 107th District Court

____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Plaintiff James Thatcher files this Original Petition against Defendants Dargel Boats, Inc., Yamaha Motor Corporation, USA, and Unknown Retailers 1 through 9 and would respectfully show the following:

I.

DISCOVERY CONTROL PLAN

1. Plaintiff elects to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4.

II.

PARTIES

2. Plaintiff James Thatcher is an adult residing in Hidalgo County, Texas.

3. Defendant Dargel Boats, Inc. is a Texas corporation residing in the State of Texas. It may be served with process by serving with its registered agent: Cleve M. Ford, 4110 N. FM 493, Donna, Texas 78537-5088.

4. Defendant Yamaha Motor Corporation USA is a California corporation residing in the State of California and operating in the State of Texas. It may be served

with process by serving its registered agent: The Prentice Hall Corporation System, 211 E. Seventh Street, Suite 620, Austin, Texas 78701.

5. Unknown Retailers 1 through 9 are unknown persons and entities that designed, manufactured, marketed, and/or sold the defective vessel and/or motor at issue in this civil action. At present, Plaintiff James Thatcher does not know the specific identities of these persons and entities and will amend the Original Petition to expressly identify these persons and entities after he ascertains their identities through the course of discovery.

III.

VENUE AND JURISDICTION

6. Venue is proper in Cameron County, Texas because the incident at issue occurred in this county. This court may exercise jurisdiction over this civil action because the damages at issue exceed the Court's minimum jurisdictional limits.

IV.

FACTUAL BACKGROUND

7. On or about October 28, 2016, Plaintiff James Thatcher was riding as a passenger aboard a motor vessel owned and operated by Dennis Goldsberry along the Arroyo Colorado River in Cameron County, Texas.

8. The vessel at issue was a 2000 Explorer 19 foot vessel (the "Vessel") with a 2003 Yamaha 150hp outboard motor (the "Motor"). The Vessel's identification number is EBA19610K900, and the Motor's identification number is GJ9L-1002709. The Motor is a component part of the Vessel.

9. As the Vessel was being gently navigated into a docking area, the stern of the Vessel suddenly and unexpectedly lifted out of the water, causing the Vessel to lose control and to jerk violently to the side in a spinning motion. As a result of this force, Plaintiff James Thatcher was ejected overboard from his position on the Vessel.

10. This occurrence was caused by a dangerous phenomenon, which is and was a known and foreseeable risk to the Defendants prior to the accident at issue and prior to the time the Vessel and Motor left each of their possession. In the accident at issue, this dangerous phenomenon was caused by the design, condition, and/or construction of the Vessel and/or Motor.

11. After Plaintiff James Thatcher entered the water, the Vessel continued its spinning motion. As the stern spun around towards his location, he lifted up his arms to shield himself from the Motor's blades. Unfortunately, the Motor severely lacerated James's body, in particular his right arm.

12. Unfortunately, the Vessel's kill switch did not activate. Likewise, the Vessel's propellers lacked adequate safety protections that would have prevented the accident and/or mitigated the damages at issue. And, the Vessel lacked adequate operational capabilities that would have allowed the operator to maintain and/or to regain control of the Vessel.

13. As a result of the accident, Plaintiff James Thatcher suffered substantial physical pain, mental anguish, disfigurement, physical impairment, medical expenses, lost wages, loss of earning capacity, and loss of services in the past and future.

V.

PRODUCTS LIABILITY

14. Plaintiff James Thatcher incorporates by reference each of the preceding factual allegations.

15. The Defendants each designed, manufactured, marketed, and/or sold the Vessel and/or the Motor. The Vessel and Motor were defectively designed and/or manufactured. These defects existed at the time the Vessel and Motor left each of the Defendants' respective control and made the Vessel and Motor unreasonably dangerous and defective. Even though safer alternative designs existed, none were utilized. These defects were a producing cause of the damages at issue.

16. The Defendants also failed to give adequate warnings of the dangers of the Vessel and Motor which were known by the Defendants (or by the application of reasonably developed human skill and foresight should have been known by the Defendants), and failed to give adequate instructions to avoid such dangers, which failures rendered the Vessel and Motor unreasonably safe. These dangers resulted from the design, condition, and construction of the Vessel and Motor. These failures were producing causes of the damages at issue.

VI.

DAMAGES

17. Plaintiff James Thatcher seeks the recovery of the following measure of past and future damages: physical pain, mental anguish, disfigurement, physical impairment, medical expenses, lost wages, loss of earning capacity, and loss of services.

In addition, Plaintiff James Thatcher seeks the recovery of pre-judgment and post-judgment interest, court costs, and attorneys' fees.

VII.

JURY DEMAND

18. Plaintiff James Thatcher has requested a trial by jury and paid the requisite fee.

VIII.

PRAYER

19. Plaintiff James Thatcher requests that upon final trial, each of them recover a judgment against Defendants for actual damages, pre-judgment and post-judgment interest, court costs, attorneys' fees, and all other relief to which they are entitled at law or in equity.

Respectfully submitted,

THE LAW OFFICE OF BOBBY GARCIA, P.C.



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Respectfully submitted,

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/s/ Bob Wynne

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